

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

OA No.965/89, OA No.991/89 &

O.A. No. 958/89

199

T.A. No.

DATE OF DECISION

S/Sh.V.P.Singh & Jagan Lal (OAs. 965/89 & 991/89) Shri OmPrakash (OA-958/89) 21.12.1990.

Petitioners

Shri M.K. Gupta

Advocate for the Petitioner(s)

Versus

Union of India & Others

Respondent

Shri N.S. Mehta, Sr. Standing


Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice Amitav Banerji, Chairman

The Hon'ble Mr. I.K. rasgotra, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *Yes*
4. Whether it needs to be circulated to other Benches of the Tribunal? *Yes*


 (AMITAV BANERJI)
 CHAIRMAN
 21.12.90.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA NO.965/1989

DATE OF DECISION: 21.12.1990

Shri V.P. Singh &
Shri Jagan Lal

...APPLICANTS

Versus

Union of India & Others

...Respondents

OA No.991/1989

Shri V.P. Singh &
Shri Jagan Lal

...Applicants

Versus

Union of India & Others

...Respondents.

OA No.958/1989

Shri Om Prakash

...Applicant

Versus

Union of India

...Respondent

Coram

The Hon'ble Mr. Justice Amitav Banerji, Chairman

The Hon'ble Mr. I.K. Rasgotra, Member (A)

For the applicants

Shri M.K. Gupta, Counsel

For the respondents

Shri N.S. Mehta, Senior
Standing Counsel.

(Judgement of the Bench delivered by
Hon'ble Mr. I.K. Rasgotra, Member (A))

OAs No. 965/1989 and 991/1989 have been filed by Shri V.P. Singh and Shri Jagan Lal jointly while OA No.958/1989 has been filed by Shri Om Prakash under Section 19 of the Administrative Tribunals Act, 1985. All the three applicants working as Investigators in the office of the Registrar General of India have raised common issues of law and fact in the three OAs in regard to counting of their adhoc service for the purpose of

21

8

seniority and promotion to the next higher grade. We, therefore, propose to deal with the three OAs through this common judgement.

Shri V.P. Singh, applicant No.1 and Shri Jagan Lal, applicant No.2 in OAs 965/89 and 991/89 joined the office of the respondent No.2 as Statistical Assistants w.e.f. 15th and 19th March, 1980 respectively and were confirmed w.e.f. the date of entry in the said post. They were promoted to the next higher post of Investigator on a purely temporary and adhoc basis for a period of one year or until further orders whichever is earlier. Shri Om Prakash in OA No.958/89 joined as Statistical Assistant in the same office w.e.f. 2.4.1980 and was confirmed in that grade on 2.4.1982. He has been regularised as Investigator on 31.1.1990.

According to the Recruitment Rules notified on 18.2.1977 the post of Investigator (Rs.550-900) is a selection post and the vacancies are to be filled 50 per cent by promotion and 50 per cent by direct recruitment. Statistical Assistant with three years' service in the grade rendered after appointment thereto on regular basis are eligible for promotion.

The applicants' claim that they were entitled to be considered for promotion to the post of Investigator in April, 1983 as they were the seniormost Statistical Assistants and had also put in three years' service as required under the Rules. Their grievance is that despite the availability of clear vacancies they were promoted only on adhoc basis as Investigators w.e.f. 30.4.1983. Shri V.P. Singh and Shri Jagan Lal were promoted on regular basis as Investigators w.e.f. 27th May, 1987 (Annexure-A-4) while Shri Om Prakash has been regularised as Investigator w.e.f. 31.1.1990.. The applicants claim that they should have been regularised by convening the Departmental Promotion Committee (DPC)

2

in the year 1983, 1984, 1985 and 1986 as Investigators as there were 7 vacancies available consequent to normal attrition in that grade. The delay in convening the DPC and consequent regularisation to the grade of Investigator has affected their future career progression and eligibility to the post of Assistant Director.

By way of relief the applicants have prayed that the respondents be directed to:-

- i) count adhoc service rendered by the applicants as Investigators towards seniority and eligibility for further promotion and consequential benefits;
- ii) consider the applicants for the post of Assistant Director, Census Operations (Technical) from the date they became eligible with consequential benefits.

2. Shri M.K. Gupta, the learned counsel for the applicants supplemented the pleadings made in the application and submitted that in this case the respondents have not made direct recruitment from 1982 to date. Thus the quota system as provided in the Recruitment Rules has broken down and, therefore, the rota rule of seniority is not applicable in the case of the applicants. The learned counsel, therefore, averred that the available vacancies against which the applicants have been promoted on an adhoc basis should be deemed to have been utilised by the promotees on a regular basis and lapsed from the direct recruitment quota. In support of his case Shri Gupta, the learned counsel cited the following judgements of the Hon'ble Supreme Court:

- a) Narender Chadha & Ors. Vs. UOI & Ors. 1986 (1) SCR 211.
- b) S.B. Patwardhan & Ors. Vs. State of Maharashtra 1977 (3) SCR 775 and

21

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c) The Direct Recruit Class II Eng. Officer's
Ass. & Ors. Vs. State of Maharashtra & Ors. JT
1990 (2) 264.

The learned counsel submitted that his case is fully covered under clauses A to E of the summarised conclusions as given in the judgement delivered by the Constitution Bench of the Supreme Court in the Direct recruit Class II Engg. Officers' Assn. (supra).

3. The respondents in their written statement have not disputed the basic facts of the case but have submitted that there was no clear vacancy in the promotion quota in the grade of Investigator from 1983 to 1986, hence no DPC meeting could be convened during this period. In fact the petitioners benefitted by the promotion on adhoc basis against the vacancies reserved for direct recruits. The respondents further contend that the regular vacancies in promotion quota became available towards the end of 1986 when some Investigators were promoted to the post of Assistant Director (Technical). Accordingly, the DPC meeting for considering promotions to the grade of Investigator was held in May, 1987. Regarding the applicants contention that seven posts of Investigators had become available by normal attrition, the respondents have clarified that only two vacancies namely that of Shri Gian Prakash Jaboo, who initially went on deputation w.e.f. 30.5.1985 for one year and subsequently got regular appointment to that post and that of Shri Mahal Singh became available in June, 1986. The other two vacancies had already been utilised (paragraph 4 of the counter). The applicants claim that seven vacancies were available for regularisation from 1983 onwards does not appear to be

22

sustainable.

4. Shri N.S. Mehta, Senior Standing Counsel for the respondents raised the preliminary objection that the case is barred by limitation. He however submitted that he had not taken this objection in the pleadings. The learned Senior counsel submitted that the cause of action arose on 30.4.1983 while the OA was filed on 3.5.1989. On the face of it, the OA is barred by limitation under Section 21 of the Administrative Tribunals Act, 1985. Further the application is also bad in law for non-joinder of the parties. Assuming that the application is allowed by the Hon'ble Tribunal the parties who are likely to be affected would be prejudiced without having been heard. The applicants should have impleaded the parties against whom the relief is claimed in the OA. Since this has not been done, the case merits to be dismissed. In support of his submission the learned counsel cited the case of Prabodh Verma Vs. State of U.P. AIR 1985 SC 167 where the Hon'ble Supreme Court observed that:-

"A High Court ought not to hear and dispose of a writ petition under Art.226 without the persons who would be vitally affected by its judgment being before it as respondents or at least some of them being before it as respondents in a representative capacity if their number is too large to join them as respondents individually, and, if the petitioners refuse to so join them, the High Court ought to dismiss the petition for non-joinder of necessary parties."

The same views have also been expressed by the Bench of Punjab and Haryana High Court in the case of



12

S.L. Khanna Vs. State Electricity Board etc. SLJ 1975 27
(P.&H.).

On merits the learned Sr. Standing Counsel submitted that the applicants were not eligible for regular promotion as Investigator as they had put in only two years' regular service in the grade against the prescribed service of three years. In this connection, Shri Mehta cited the case of Miss R. Prabhadevi Vs. Govt. of India (Delhi) & Ors. ATR 1986 (1) CAT 120. The Tribunal in this case had taken the view that seniority confers only a right to be considered for promotion subject to fulfilment of eligibility criteria. Seniority is not a substitute for qualification. The learned Sr. Standing counsel further submitted that the applicants could be considered for regular promotion only against the vacancies in the promotee quota. They cannot be regularised against the vacancies arising in the direct recruitment quota. The learned Sr. Standing counsel further submitted that Hon'ble Supreme Court in the case of Ashok Gulati & Ors. Vs. B.S. Jain & Ors. 1987 (2) SC ATC 608 have unambiguously clarified that there is no principle or rule which lays down that the length of continuous officiation/service is the only relevant criterion in determining seniority in a particular cadre or grade, irrespective of any specific rule of seniority to the contrary. Their Lordships of the Supreme Court in Ashok Gulati & Ors. Vs. B.C. Jain & Ors. (supra) have emphasized:-

"that the principles laid down in the two leading cases of N.K. Chauhan and S.B. Patwardhan, reiterated in Baleshwar Dass case and subsequently followed in several decisions are not an authority for any such proposition. These decisions particularly

24

that in Baleshwar Dass case clearly lay down that ordinarily and in the absence of any specific rule of seniority governing the cadre or service, the length of continuous officiation should be counted in reckoning seniority as between direct recruits and promotees. These authorities nowhere lay down that the same principle i.e. the length of continuous officiation must be the sole guiding factor and the only criterion in determining seniority of such ad hoc employees vis-a-vis direct recruits."

The length of continuous officiation has validity only where there is no specific rule of seniority governing the cadre or service. The learned Sr. Standing counsel further drew our attention to the case of P.D. Aggarwal & Ors. Vs. State of U.P. & Ors. 1987 (3) SCC 622 where their Lordships of the Supreme Court observed that:-

"28. Similar observation was also made by the Court in the case of State of Gujarat v. C.G. Desai. Therefore we make it clear that the period of service rendered by the ad hoc appointees before their service has been duly regularised in accordance with the regularisation rules, cannot be taken into account in reckoning their seniority in service. Their seniority in service will be counted only from the date when such ad hoc appointees after regularisation in accordance with concerned rules have become members of the Service."

The learned Sr. Standing counsel stressed that the promotees given purely adhoc and temporary promotion cannot claim a legal right to appropriate the vacancies

14

of the direct recruits. Shri Mehta, the learned Sr. Standing Counsel further sought to fortify his case by referring to the Direct Recruit Eng. Officers' Ass. Vs. State of Maharashtra (supra) that:-

"(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation.

The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority."

Since in this case the initial appointment was only adhoc and not according to rules the applicants have no right for counting the adhoc service. Regarding the enlargement of the zone of consideration of the candidates from 8-10 in violation of the instructions of the Department of Personnel & Training, the learned Sr. Standing counsel submitted that the enlargement of the zone of consideration is allowed under the Department of Personnel's instructions when adequate number of SC/ST candidates are not available within the prescribed zone. As all the three applicants belong to SC/ST category, it will be reasonable to presume that enlargement of the zone was necessitated to bring adequate number of SC/ST candidates within the zone of consideration.

We have heard the learned counsel of both the parties. We are not persuaded to believe that the quota rota system had failed. In fact there had been no failure in the direct recruitment, however some vacancies

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15

in direct recruitment quota during the period 1982 to 1986 against which candidates recommended by the Union Public Service Commission (UPSC) persisted as some of the candidates did not join. Such a situation cannot be construed as a break down of the system of fixed quota of vacancies in the two sources of recruitment as per the relevant Recruitment Rules. Adhoc promotions made to cover such contingencies cannot also be deemed to be made according to the rules. The sanctity of the quota rules has been recognised in a catena of judicial pronouncements. The Hon'ble Supreme Court in the case of Bishan Sarup Gupta v. Union of India & Others, 1973 SCC (L&S)1; A.K. Subraman & Others v. Union of India & Others, 1975 SCC (L&S)36 has held that if an excess number of promotion is made, that number shall have to be pushed down to subsequent years and absorbed in the quota of promotees for those years. Again in V.B. Badami v. State of Mysore, AIR 1980 SC 1561 the Hon'ble Supreme Court has observed:-

"If the promotees occupy any vacancies which are within the quota of direct recruits, when direct recruitment takes place, the direct recruits will occupy the vacancies within their quota, Promotees who were occupying the vacancies within the quota of direct recruits will either be reverted or they will be absorbed in the vacancies within their quota. If the promotions are in excess of the number, then the excess will have to be accommodated in the promotional vacancies during the subsequent period vide V.B. Badami v. State of Mysore, AIR 1980 SC 1561."


22

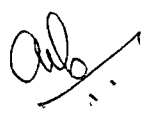
16

We are satisfied that this is not a case where the quota rule gave way and, therefore, rota rule of seniority has become ineffective and otiose. Applicant No.1 & Applicant No.2 were regularised as Investigators w.e.f. 27.5.1987 and Shri OM Prakash (applicant in OA-958/89) was regularised w.e.f. 31.1.1990 as Investigator. They cannot be deemed to be appointed on regular basis from the date they started officiating on adhoc basis against the posts falling in direct recruits quota. The doctrine of length of service as a rule of seniority holds good only where there is no statutory rule of seniority. This is not the case here. We are also not able to accept that quota system had collapsed and, therefore, the posts falling in the quota of direct recruits can be permanently appropriated for the promotees.

In view of the above, we are not inclined to interfere in the matter. All the three applications viz. OA Nos.965/1989, 991/1989 and 958/1989 are, disallowed and accordingly dismissed .

There will be no order as to costs.


(I.K. RASGOTRA)
MEMBER(A) 21/12/1990


(AMITAV BANERJI)
CHAIRMAN

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